

**Testimony In Support of Bill No. 218
by**

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Commerce Committee

**In Favor of Proposed Raised Bill No. 218 (RAISED) AN ACT CONCERNING
BROWNFIELD REMEDIATION**

Attorneys Ann Catino and Gary O'Connor have each practiced in the area of environmental law and real estate development for over thirty years. We have been chairing the Brownfield Working Group since it was first created as the State's Task Force on Brownfield Strategies fifteen (15) years ago through Public Act 06-184. The Task Force was first authorized by the General Assembly to address the derelict, abandoned and long forgotten properties that plague every municipality in our state and no longer contribute to the vitality and economy of the town or City. Our job was to propose long-term solutions for addressing and cleaning up these Brownfields and restoring them to productive reuse. Specifically, the Task Force was charged with proposing new incentives and programs to stimulate investment and the rehabilitation of Brownfields. We issued our first Report to the Commerce and Environment Committees in February 2007. Since that time, our Working Group was renewed every year and, through legislation codified at C.G.S. § 32-770, the Working Group was created as a standing working group, continually charged to work with DECD, DEEP, and other stakeholders to address and monitor Brownfield redevelopment, the efficacy of the programs that were created, and to continually analyze not just the effectiveness of the programs but to take proactive steps to stymie further Brownfield creation.

Examples of the initiatives we proposed and the new laws that were passed virtually every year broke ground on many new and innovative programs. New initiatives included:

- Establishment of the Office of Brownfield Remediation and Development (OBRD) as a "one stop shop" for all Brownfield programs and assistance.
- New grants and loan programs were established targeted at new developers and municipalities.

- New Liability relief programs were developed and are administered by the DECD and DEEP including:
 - o the Abandoned Brownfield Cleanup Program
 - o the Brownfield Remediation and Revitalization Program
 - o the Municipal Liability Relief Program
- Revisions to the Significant Environmental Hazard Program to allow for properties for very high levels of contaminants to be subject to mitigation (or made safe before a full remedial action would occur)
- Land Banks were authorized to consolidate focus and expertise on a regional basis.

Under these various legislative initiatives, the DECD runs an efficient and highly effective brownfields program in collaboration with DEEP. The partnership between DECD and DEEP is exemplary. These agencies work together seamlessly when it comes to seizing brownfield redevelopment and turning properties back to productive reuse and in working with our State's municipalities – no matter how big or small. Municipalities are also empowered to pursue investigation and remediation of brownfield properties, with liability relief and various protections. Such powers can certainly jump start evaluation of these properties prior to any foreclosure or other condemnation action.

While we have seen many successes, we continue to meet to be your eyes and ears, and to determine whether the programs are (or are not) working and to determine what more needs to be done and when. We are the legislatively mandated advocates for the proper redevelopment of Brownfield properties and to make recommendations to you regarding improvements to the State's brownfield programs.

This year we have proposed and are steadfast in our support of the changes set forth in Raised Bill 218 (modifications to two of the programs proposed and developed as a result of these brownfield initiatives). Last year, these changes were proposed and, with some minor modifications, were voted out of the Commerce Committee. Last year's bill, however, also included a provision involving the creation of brownfield tax credits. Due to this provision, the bill was transferred to the Committee on Finance, Revenue and Bonding, and was not acted upon further. As a result, these two significant provisions did not move forward. This year, we are focused exclusively on these modifications as further technical clarifications to streamline these programs.

Raised Bill No. 218 makes technical revisions to C.G.S. §32-768 ((Abandoned Brownfield Cleanup Program) (Section 1) and C.G.S. §32-769 (Brownfield Remediation and Revitalization Program) (Section 2). Both sections clarify that the liability relief granted is dependent upon remaining in compliance with the program and appears to us to be an

appropriate change. But each also contains some necessary substantive changes relative to each program. The revisions allow short-term lessees of eligible properties, who subsequently seek to purchase those properties, to be eligible for acceptance in both the ABC program and the BRRP. Under the current law, an applicant that was acquiring an eligible property by means of a lease/option to purchase, could be ineligible from the ABC program and BRRP. State regulators have taken the position that under §32-768 (b), an applicant, who leases from an owner that was responsible for contaminating the property, would be considered a person “affiliated with a person responsible for such pollution...” through a direct contractual relationship. This prohibition would remove a whole segment of potential prospective purchasers, who never contributed to the pollution onsite, but are willing to investigate and remediate the property under the ABC program or BRRP. As we understand it, the State is concerned with allowing eligibility to holders of long-term leases, who ultimately acquire the property from such a responsible owner, because it is more difficult to determine whether the owner or the tenant had been responsible for a release, the longer the tenant occupies a property. The revision attempts to strike a balance by allowing lessees under leases with terms of five years or less to remain eligible for consideration for both programs upon acquisition of the eligible property, even if the previous owner was responsible for some or all of the pollution on the site.

Section 1 also closes an enforcement loophole in the ABC program. Currently, there is no time requirement for parties accepted into the ABC program to enter into the voluntary remediation program and start the investigation and remediation process. The proposed bill requires an eligible party to enter the voluntary cleanup program within six months of taking title to the eligible property.

Finally, Section 1 also establishes a time limit in which the Commissioner of Energy and Environmental Protection can audit a verification filed with the Department of Energy and Environmental Protection under the ABC program, which mirrors the same provision already codified for the BRRP program. Generally, a verification is filed by the owner’s licensed environmental professional (“LEP”) once the property has been cleaned up. The “verification” is the LEP’s written opinion on a DEEP form that an investigation of the property has been performed in accordance with prevailing standards and guidelines and that the property has been remediated in accordance with the remediation standards. Until the verification has satisfactorily completed an audit, or the owner receives a no audit letter from the Commissioner, the property is essentially unmarketable and unfinanceable. Currently, the Commissioner has no deadline in which to audit a verification under the ABC program (like exists under other DEEP programs). The proposed bill establishes a six-month deadline from the date of filing a completed verification for the Commissioner to conduct such audit. This is consistent with the audit deadlines contained in the BRRP and Transfer Act.

Beyond these changes, we are proposing further changes to the ABC and BRRP programs based upon recent discussions the Working Group has had with DECD and DEEP. In

addition to the change identified above regarding when an applicant (who is a title holder) is to enter into either the ABC or BRRP programs, there is currently no time limit during which an applicant who enters the program must take title. We propose that such applicant take title within two (2) years of entry into the program, but it may be extended upon the discretion of the DECD Commissioner. This type of provision would allow for better management of the programs and provide the Commissioner with the authority to designate other applicants into the programs for the same property in the event the first applicant failed to move forward. Also, we are finalizing review of our review of whether the Commissioner should have authority under the ABC program to enter into a Memorandum of Understanding with a property owner for ongoing monitoring and/ or additional remediation before accepting a verification. We cannot offer an opinion at this time; however, we do note that the authority exists for the BRRP. In addition, we are evaluating whether there may be inconsistencies in the application of the statutory liability relief offered to an applicant in the BRRP versus the ABC program, when the programs are to provide the same protections to the eligible owners from investigating and remediating releases that have migrated off-site. If warranted, we may seek further modifications to make the programs parallel in this regard.

In closing, we believe this bill includes necessary changes and programs to make our brownfield programs more robust and stronger.

We are ready to meet with the Committee Chairs and any committee member to discuss the Brownfield initiatives, this bill and our further proposed changes in more detail.

We THANK YOU for your attention to this very important initiative and for all the work the Committee has done for the past 16 years to support redevelopment of the brownfields in our State.